

The FCC's NOI also notes that the Cable Act of 1992 requires a report to Congress by October 5, 1994, with respect to the effectiveness of the Commission's EEO rules, "particularly the effectiveness...in promoting the congressional policy favoring increased employment opportunity for women and minorities in positions of management authority." ^{2/}

DISCUSSION

The NHMC welcomes this opportunity to formally propose certain changes in the FCC's EEO rules, guidelines and procedures. The NHMC greatly appreciated the opportunity for its leadership to discuss some of these EEO issues with Chairman Reed Hundt in his office on March 18, 1994. The Chairman communicated to the NHMC at that meeting his desire to foster greater employment and ownership opportunities for minorities and the NHMC urges the entire Commission to support that effort in this proceeding and in the FCC's subsequent report to Congress.

The NHMC believes that the NOI fairly summarized both the current status of the Commission's EEO program as well as some of the most widely discussed changes that could be made to the agency's EEO rules and policies. Indeed, the time for extended discussion is long past. Decades after the Commission's EEO rules and policies were announced, minority employment at broadcast stations is woefully inadequate. It even lags behind the younger, still maturing cable industry. Accordingly, the NHMC

^{2/} See Section 22(g) of the Cable Act of 1992.

proposes the following specific changes to the Commission's EEO rules and policies:

1. Part-time Employees: The processing guidelines should be applied to both part-time and full-time employees. In this cycle of corporate downsizing, more and more licensees choose to economize by hiring numerous part-time employees. Many of these part-time jobs are for entry-level positions. A licensee's efforts with respect to minority hiring for these entry-level jobs should not be excluded from the FCC's oversight. Subject only to contrary state employment definitions, "any" part-time employee (for "any" number of hours) should be counted.
2. Slowly Increase the "Percentage of Parity" Guidelines: The EEO processing guidelines should be modified so as to gradually require an increase in every station's workforce as a percentage of the area's labor force. The long-existing "50% of parity" guideline should be raised to 60% by January 1, 1995, to 70% in 1996 and 80% in 1997. Such a phased-in approach should have been adopted years ago. Many licensees have merely grown accustomed to "50% of parity" as the FCC's ultimate EEO goal. Many licensees treat the 50% minimum as the "maximum". If the Commission's goal for twenty years has been "equal" employment opportunity then, in 1994, it certainly is time to move closer toward

"equal" employment realities than merely "50%" of parity.

3. Management Level Focus: The "officials/managers" job category deserves focused EEO oversight by the Commission, both at renewal and, in the case of television, at mid-term review. In 1992, only 12% of Officials/Managers of broadcast stations (and cable) were minorities. Since new station owners often come from the ranks of station managers, it is not surprising that minority ownership is also lagging throughout the broadcast industry. Moreover, the FCC's longstanding focus only on "Top Four" job categories gives improper weight to the "Top Four" job category of "technicians", a position that rarely has program diversity potential.
4. "Dominant" Minority Focus: The processing guidelines should continue to be applied not only to "total minorities" in a station's labor force but to the "dominate minorities" in the area's labor force in order to ensure that a station is being responsive to the most populous minority groups in its service area. For example, where an area's labor force is 35% Hispanic-American, the Commission's rules should not be capable of manipulation so that a broadcaster who employs "sufficient" minorities -- but almost no Hispanic-Americans -- is deemed to have "met" the FCC's processing guidelines. This concern is more than academic in some

cities, where the fast-growing Hispanic-American labor force is rapidly out-distancing other, longer-established minority groups that had a "headstart" years ago in some broadcast stations' minority employment programs.

5. Updated Census Data: The Commission should not rely solely on Census Data that is published every ten years. The agency has a legal duty to rely on the best evidence available to it. It should use the Department of Labor's annual MSA labor force updates. While possibly impractical a decade ago, in today's computerized age it is inexcusable for the FCC to rely on ancient data. There is no excuse for the FCC, in its 1991 renewals, to have been relying -- as it did -- on 11-year old, 1980 Census Data merely because the "new" 1990 Census data was not yet available. When 1997, 1998, 1999 and 2000 broadcast renewals come up, the 1990 Census Data as to the Hispanic labor force for most major American cities will be unlawfully outdated. The FCC should avoid this problem now by adopting the DOL annual MSA labor force updates. (Even then, the FCC will be a couple of years "behind", since the DOL updates for the prior year are released in late spring of the following year and, reasonably, would not be made effective by the FCC for use in station renewals until the following January 1st.)

6. Expanded Job Categories. The FCC should harmonize broadcast and cable EEO reporting by seeking to enlarge the nine job categories to 15.
7. Renewal Reporting for Entire License Term: The Form 396 EEO Program Report by renewal applicants should require licensees to summarize recruiting, hiring and promotion efforts during the entire license term, not merely the last 12 months. Similarly, inquiry letters sent to certain licensees in the "second step" of the FCC's EEO renewal analysis at renewal should seek data as to each hiring and promotion opportunity during the entire prior license term.
8. Paperwork Reduction: The NHMC is interested in jobs for minorities, not more bureaucracy. While applauding the FCC's overall "efforts" test as a movement away from the quota game, the "zone of reasonableness" game and the minimum compliance schemes of some licensees, the Commission should seek to reduce paperwork burdens for licensees (particularly at small-market stations). One means of avoiding the "Paper Chase" favored by some larger licensees (who download their lists of hundreds of minority recruitment sources into endless renewal exhibits) would be to require licensees to list on their Form 396 renewal reports only those minority recruitment sources that produced actual minority referrals during the past license term. Below-guideline

licensees who had few listed sources would be prime candidates for stern EEO sanctions at renewal.

9. Small Market Relief: The NHMC does not oppose reasonable efforts by the FCC to differentiate its EEO rules among various sized markets. Should the FCC commence to evaluate EEO performance based on full-time and part-time employment, then the FCC might reasonably increase its current "less than 5" employee exemption to 8.

In sum, the FCC should adopt the foregoing changes promptly and, where Congressional authority is needed for implementation, the October 1994 Report to Congress should request such.

Respectfully Submitted,



Esther Renteria
National Chair
National Hispanic Media Coalition
8400 East Olympic Blvd. #250
Los Angeles, CA 90022

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